

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LADONESTY FOWLKES,

Plaintiff,

Case No. 19-cv-1648-pp

v.

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR LEAVE TO
PROCEED WITHOUT PREPAYING THE FILING FEE (DKT. NO. 6)**

The plaintiff, who is representing himself, has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2. On November 19, 2019, the court issued an order directing the plaintiff to file an amended complaint and request to proceed without prepaying the filing fee because the plaintiff had not used this court's standard forms. The plaintiff filed his amended complaint, dkt. no. 5, and his amended request to proceed without prepaying the filing fee, dkt. no. 6.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's affidavit indicates that he is not employed, he is married, and he has five children he is either responsible for supporting or for whom he owes back child support; he pays \$215 per month for these obligations. Dkt. No. 6 at 1. The only income listed by the plaintiff is \$1,600 per month in wages or salary earned by his spouse. Id. at 2. Against this income, the plaintiff lists \$1,100 in monthly expenses (\$400 rent, \$100 alimony/child-support, \$200 health care, \$250 food, \$150 phones). Id. at 2. The plaintiff owns a 2004 Cadillac worth approximately \$2,000, he does not own any other property of value, and he has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff states, "Have been disabled since 2016 and unable to work or even drive a car." Id. at 4. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

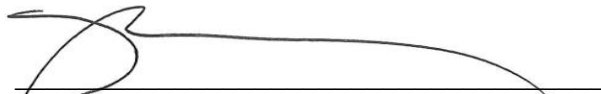
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's amended complaint—this court's standard form—indicates that he was denied benefits by the Commissioner of Social Security, that he was disabled during the time period included in this case, and that he believes the Commissioner's unfavorable conclusions and findings of fact in denying benefits are not supported by substantial evidence and/or are contrary to law and regulation. Dkt. No. 5 at 3. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 6.

Dated in Milwaukee, Wisconsin this 6th day of December, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge